

FROM McANDREWS, HELD, & MALLOY

(FRI) 3. 8' 02 12:08/ST. 12:07/NO. 4861050183 P 1

500 W. Madison Street, Suite 3400  
Chicago, Illinois 60661  
Phone: 312/775-8000  
Fax: 312/775-8100

**McAndrews, Held & Malloy, Ltd.**

# Fax

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MAR - 8 2002

PETITIONS OFFICE

**To:** Office of Petitions (Patent)

**From:** Michael B. Harlin

**Fax:** (703) 308-6916

**Date:** March 8, 2002

**Phone:**

**Page:** 19

**Re:**

**CC:**

**Client/Matter:** Ballard (0590) - 12369US01

**•Comments:**

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## ASSISTANT COMMISSIONER FOR PATENTS

Sir: Please place the USPTO receipt stamp here on and place in outgoing mail to acknowledge receipt of:

Docket No: 123694501  
Applicant: Muller et al.  
Serial No.: 091256.386  
Filed: 2-24-99

Transmittal PIPE  
Fee \$ \_\_\_\_\_  
Patent Application including:  
— Page(s) Cover Sheet SEP 1 0 2001  
— Page(s) Specification  
— Page(s) Claims # \_\_\_\_\_  
— Page(s) Abstract  
— Page(s) Drawings Formal Informal  
— Response to Notice of Missing Parts \_\_\_\_\_  
— Declaration & POA Signed \_\_\_\_\_ Unsigned \_\_\_\_\_  
— Amendment \_\_\_\_\_ Page(s)  
— Assignment \_\_\_\_\_ Page(s) Cover Sheet \_\_\_\_\_ Page(s)  
— IDS with PTO-1449 \_\_\_\_\_ Page(s)  
— Cited References  
— ☒ Other Declaration for Review of  
Application, Copy of Transmittal &  
Declaration & POA for  
Confirmation, Not of Withdrawal  
— ☒ Certificate of Mailing as dated below  
— ☐ Certificate of Express Mailing as dated below  
Express Mail Label No. \_\_\_\_\_

Dated: 9-7-01

Respectfully: McANDREWS, HELD & MALLOY, LTD.  
Attorneys for Applicant

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(FRI) 3. 8' 02 12:09/ST. 12:07/NO. 4861050183 P 3

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RETIRES OFFICE

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**MCANDREWS, HEL**  
34TH FLOOR  
500 WEST MADISON STREET  
CHICAGO, ILLINOIS 60661

SEP 19 2001

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Northwestern  
University

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Group Art Unit 1745  
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Examiner \_\_\_\_\_  
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**SECRET**

Pursuant to 37 C.F.R. 1.137, applicants hereby petition the U.S. Patent and Trademark Office to revive the above-identified application erroneously declared abandoned in a Notice of Abandonment under 37 CFR 1.53 (f) or (g) dated August 21, 2001 (copy attached at Tab C). The factual basis of the present petition to revive is set forth below:

- (1) On June 6, 2001, the applicants' undersigned attorney spoke by telephone with Ms. Linda Hallman of the USPTO's Office of Initial Patent Examination, during which Ms. Hallman indicated that the USPTO had not received an executed Declaration and Power of Attorney for the above application. The applicants' undersigned attorney also indicated during the telephone conversation with Ms. Hallman that a Notice to File Missing Parts had not been received.
- (2) On June 21, 2001, the applicants' undersigned attorney transmitted by facsimile to the USPTO's Office of Initial Patent Examination a Transmittal of Executed Declaration and Power of Attorney and accompanying executed Declaration and Power of Attorney (copy attached at Tab A). The Transmittal of Executed Declaration and Power of Attorney included a Certificate of Facsimile Transmission under 37 CFR 1.8 in which the applicants' undersigned attorney stated: "I hereby certify that this and all documents referred to herein are being transmitted, via facsimile, to the Office of Initial Patent Examination, Managers Office, at 703-305-9822 on June 21, 2001."
- (3) The applicants' undersigned attorney received a Transmission Report (copy attached at Tab B) showing

the USPTO's receipt of the above facsimile transmission on June 21, 2001.

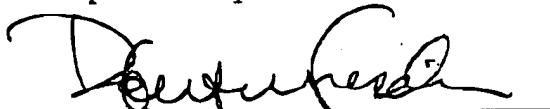
- (4) On September 4, 2001, the applicants' undersigned attorney received a Notice of Abandonment under 37 CFR 1.53 (f) or (g) dated August 21, 2001 (return copy attached at Tab C).

\* \* \* \* \*

In view of the foregoing facts, applicants hereby requests withdrawal of the erroneously issued Notice of Abandonment under 37 CFR 1.53 (f) or (g) and reinstatement of the above-identified application.

Applicants submit that, since the error in declaring the above application abandoned was the USPTO's, no fee should be due for this petition. If, however, a fee is required for this petition, please charge any such fees, as well as any other fees incurred in connection with this submission, to Deposit Account No. 13-0017.

Respectfully submitted,



Robert W. Fieseler  
Registration No. 31,826  
Attorney for Applicants

McANDREWS, HELD & MALLOY, LTD.  
500 West Madison Street, 34th Floor  
Chicago, Illinois 60661

Telephone (312) 775-8000  
Facsimile (312) 775-8100

Date:

September 7, 2001

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D. C. 20231, on 9-7-01  
Date of Deposit

ROBERT W. FIESELER

Name of applicant, assignee, or  
Registered Representative

Robert W. Fieseler

Signature

9-7-01

Date of Signature

## **EXHIBIT A**



Attorney Docket No. 12369US01

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT APPLICATION OF:

JENS MULLER,  
PETER URBAN,  
REGINA WEZEL,  
KEVIN M. COLBOW and  
JIUJUN ZHANG


SERIAL NO. 09/256,386

FILED: February 24, 1999

FOR: DIRECT DIMETHYL ETHER  
FUEL CELLS

GROUP ART UNIT: 1745

EXAMINER: Not yet assigned

Certificate Of Facsimile  
Transmission  
Under 37 CFR §1.8I hereby certify that this  
and all documents referred  
to herein are being  
transmitted, via facsimile,  
to the Office of Initial  
Patent Examination,  
Managers Office, at 703-  
305-9822 on June 21, 2001.  
Robert W. Fieseler  
Registration No. 31,826  
Attorney for ApplicantsTRANSMITTAL OF EXECUTED DECLARATION AND POWER OF ATTORNEYOffice of Initial Patent Examination  
Manager's Office  
Assistant Commissioner for Patents  
Washington, D.C. 20231

Sir:

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PATENT OFFICE

In response to the request by Linda Hallman during a telephone conversation with the applicants' undersigned attorney on June 6, 2001, transmitted herewith is a copy of the executed Declaration and Power of Attorney for the above application. Applicants also note that, since the applicants' attorney did not receive a Notice of Missing Parts for the

present application, the Declaration and Power of Attorney had not been previously submitted to the USPTO.

Please charge any fees incurred in connection with this submission to Deposit Account No. 13-0017 in the name of McAndrews, Held & Malloy, Ltd.

Respectfully submitted,



Robert W. Fieseler  
Attorney for Applicants  
Registration No. 31,826

McANDREWS, HELD & MALLOY, LTD.  
500 West Madison Street, 34th Floor  
Chicago, Illinois 60661

Telephone (312) 775-8000  
Facsimile (312) 775-8100

Dated: June 21, 2001

Attorney Docket No. 12369US01

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TELEPHONE OFFICE

**DECLARATION AND POWER OF ATTORNEY**

As a below-named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name.

I believe that I am the original inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

**DIRECT DIMETHYL ETHER FUEL CELLS**

the specification of which was filed in the U.S. Patent and Trademark Office on February 24, 1999, and assigned Serial No. 09/\_\_\_\_\_.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims. I acknowledge the duty to disclose information which is material to the examination of this application in accordance with Title 37, Code of Federal Regulations, Section 1.56(a).

I hereby claim foreign priority benefits under Title 35, United States Code, section 119(a)-(d) or section 365(b) of any foreign application(s) for patent or inventor's certificate, or section 365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below any foreign application(s) for patent or inventor's certificate or any PCT international application(s) designating at least one country other than the United States of America filed by me on the same subject matter having a filing date before that of the application on which priority is claimed:

German Patent Application No. 19807876.5  
filed February 25, 1998

I hereby claim the benefit under Title 35, United States Code, section 119(e) of any United States provisional application(s) listed below:

NONE.

I hereby claim the benefit under Title 35, United States Code, section 120 of any United States application(s), or section 365(c) of any PCT international application

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designating the United States of America, listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in such prior application(s) in the manner provided by the first paragraph of Title 35, United States Code, section 112, I acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, section 1.56(a) which became available between the filing date of the prior application(s) and the national or PCT international filing date of this application:

U.S. Patent Application Serial No. 09/191,049  
filed November 12, 1998

I hereby appoint:

George P. McAndrews	Reg. No. 22,760
John J. Held	Reg. No. 21,061
Timothy J. Malloy	Reg. No. 25,600
William M. Wesley	Reg. No. 26,521
Lawrence M. Jarvis	Reg. No. 27,341
Gregory J. Vogler	Reg. No. 31,313
Jean Dudck Kuelper	Reg. No. 30,171
Herbert D. Hart III	Reg. No. 30,063
Robert W. Fieseler	Reg. No. 31,826
D. David Hill	Reg. No. 35,543
Thomas J. Wimbiscus	Reg. No. 36,059
Steven J. Hampton	Reg. No. 33,707
Priscilla F. Gallagher	Reg. No. 32,223
Stephen F. Sherry	Reg. No. 30,590
Patrick J. Arnold Jr.	Reg. No. 37,769
George Wheeler	Reg. No. 28,766
Janet M. McNicholas	Reg. No. 32,918
Ronald E. Larson	Reg. No. 24,478
Christopher C. Winslade	Reg. No. 36,308
Edward A. Mas II	Reg. No. 37,179
Gregory C. Schodde	Reg. No. 36,668
Edward W. Remus	Reg. No. 25,703
Donald J. Pochopien	Reg. No. 32,167
Sharon A. Hwang	Reg. No. 39,717
David D. Headrick	Reg. No. 40,642
Dean D. Small	Reg. No. 34,730
Alejandro Menchaca	Reg. No. 34,389
Kirk A. Vander Leest	Reg. No. 34,036
Richard T. McCaulley, Jr.	Reg. No. 41,977
Anthony E. Dowell	Reg. No. 39,661
Peter J. McAndrews	Reg. No. 38,547
Krista S. Schwartz	Reg. No. 42,134
Eligio C. Pimentel	Reg. No. 42,076
John F. Nethery	Reg. No. 42,928

3/5

Paul L. Rodriguez	Reg. No. 40,788
Stephen H. Bean	Reg. No. 41,607
James P. Murphy	Reg. No. 40,471
Joseph M. Barich	Reg. No. 42,291
Scott P. McBride	Reg. No. 42,853

the address and telephone number of each of whom is McAndrews, Held & Malloy, Ltd., 500 West Madison Street, 34th Floor, Chicago, Illinois 60661, 312/707-8889, as our attorneys with full power of substitution and revocation to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith.

Please direct telephone calls to Robert W. Fieseler at (312) 707-8889. Please direct facsimiles to Robert W. Fieseler at (312) 707-9155.

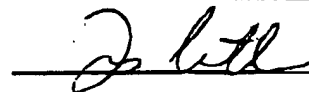
Please address correspondence to:

Robert W. Fieseler  
McAndrews, Held & Malloy, Ltd.  
500 West Madison Street, Suite 3400  
Chicago, Illinois 60661

I hereby declare that all statements made herein of our own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full name of first inventor Jens Müller

Inventor's signature



Date

30-03-99

Residence Address Burgsteige 26

89134 Blaustein, Germany

Citizenship German

Post Office Address

Daimler Chrysler AG

FT 1 / EG, Postfach 2360,

D-89013 Ulm, Germany

4/5

Full name of second inventor Peter Urban

Inventor's signature

Peter UrbanDate 15 April 1999Residence Address ~~Fünf-Bäume-Weg 195~~Zeppelin-Str. 589091 Ulm, Germany92224 AmbergCitizenship German

Post Office Address

Zeppelin-Str. 592224 AmbergGermanyFull name of third inventor Regina Wezel

Inventor's signature

Regina WezelDate 19 April 1999Residence Address Virchowstr. 989075 Ulm, GermanyCitizenship German

Post Office Address

Daimler Chrysler AGFT1/EG, Postfach 2360D-89013 Ulm, GermanyFull name of fourth inventor Kevin M. Colbow

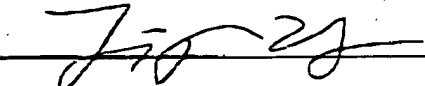
Inventor's signature

Kevin M. ColbowDate 3 March 1999Residence Address 1305 Fernwood CrescentNorth Vancouver, B.C., Canada V7P 1K3Citizenship Canadian

5/5

Post Office Address Ballard Power Systems Inc.  
9000 Glenlvon Parkway  
Burnaby, B.C., Canada V5J 5J9

Full name of fifth inventor Jiujun Zhang

Inventor's signature  Date MAY/31/98

Residence Address 11271 Williams Road  
Richmond, B.C., Canada V7A 1J2

Citizenship Canadian

Post Office Address Same as fourth joint inventor

## **EXHIBIT B**



\*\*\*\*\*  
TRANSMISSION REPORT  
\*\*\*\*\*(THU) JUN 21 2001 15:27  
McANDREWS, HELD, & MALLOY

DOCUMENT #	TIME STORED	TIME SENT	DURATION	PAGE (S)	MODE	RESULT
4861050-054	6. 21 15:25	6. 21 15:25	1' 55"	8.	ECM	OK

DESTINATION	DST. TEL #
0000=17033059822	=1190=0000=17033059822

**McANDREWS, HELD, & MALLOY, LTD.**34th Floor  
500 West Madison Street  
Chicago, Illinois 60661Telephone: 312-707-8889  
Facsimile: 312-707-9155**FACSIMILE COVERSHEET**

TO: Office of Initial Patent Examination  
Manager's Office

FROM: Michael B. Harlin/Robin Cali

DATE: June 20, 2001

RE: U.S. Patent Application No. 09/256,386  
Filed February 24, 1999  
Muller et al.  
DIRECT DIMETHYL ETHER FUEL CELLS

NO. OF PAGES (INCLUDING COVER SHEET) 9

FACSIMILE NO. 703-305-9822

MESSAGE: See attached.

**PLEASE CONFIRM RECEIPT OF THIS COMMUNICATION**

## **EXHIBIT C**



## UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, D.C. 20231  
www.uspto.gov

APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
09/256,386	02/24/1999	JENS MULLER	12369US01

CONFIRMATION NO. 9751

ABANDONMENT/TERMINATION  
LETTER

\*OC000000006451691\*

MCANDREWS HELD AND MALLOY LTD  
34TH FLOOR  
500 WEST MADISON STREET  
CHICAGO, IL 60661

Date Mailed: 08/21/2001

## NOTICE OF ABANDONMENT UNDER 37 CFR 1.53 (f) OR (g)

The above-identified application is abandoned for failure to timely or properly reply to the Notice to File Missing Parts (Notice) mailed on 02/16/2000.

- No reply was received.

A petition to the Commissioner under 37 CFR 1.137 may be filed requesting that the application be revived.

Under 37 CFR 1.137(a), a petition requesting the application be revived on the grounds of **UNAVOIDABLE DELAY** must be filed promptly after the applicant becomes aware of the abandonment and such petition must be accompanied by: (1) an adequate showing of the cause of unavoidable delay; (2) the required reply to the above-identified Notice; (3) the petition fee set forth in 37 CFR 1.17(l); and (4) a terminal disclaimer if required by 37 CFR 1.137(c).

Under 37 CFR 1.137(b), a petition requesting the application be revived on the grounds of **UNINTENTIONAL DELAY** must be filed promptly after applicant becomes aware of the abandonment and such petition must be accompanied by: (1) a statement that the entire delay was unintentional; (2) the required reply to the above-identified Notice; (3) the petition fee set forth in 37 CFR 1.17(m); and (4) a terminal disclaimer if required by 37 CFR 1.137(c).

Any questions concerning petitions to revive should be directed to "Office of Petitions" at (703) 305-9282.

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*A copy of this notice MUST be returned with the reply.*

Doshie E. Day

---

Customer Service Center

Initial Patent Examination Division (703) 308-1202

PART 2 - COPY TO BE RETURNED WITH RESPONSE